Information Summary and Recommendations

Definition of Surgery Sunrise Review

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Special Preface

The following is taken from a written submission received by the department from William Shields, M.D. It is offered without comment.

"My practice focuses on retinal diseases, and I see patients on referral from both optometrists and ophthalmologists. Patients with retinal diseases often have serious problems that require timely referral and intervention. It has been my experience that both groups [of providers] have been well trained in the delegation of care to a specialist when needed. Both groups have been able to demonstrate to me that their members can be skilled in providing quality care and education for their patients. I am convinced that optometrists and ophthalmologists are caring people who truly want the best for their patients. Despite this common and shared goal, I am saddened by the antagonism of the parties toward each other.

"Central to this antagonism is a lack of complete understanding of the quality of care that either optometrists or ophthalmologists can provide. Knowledge of eye care has, like 'information' in a broad sense, flowed beyond the walls of the ophthalmologists' offices. Like information in every discipline, the knowledge base of eye care has spread such that optometrists are much better trained than many ophthalmologists are aware. We are seeing the transfer of medical knowledge everywhere; as a result, nurses, medical technicians, physicians assistants, aides and optometrists are now capable of rendering care that had once been the domain of physicians at academic centers. This knowledge transfer will continue, and I think accelerate, as cost pressure direct more care away from expensive physicians and surgeons."

"It is my opinion that eye care works best when ophthalmologists and optometrists work well together. Both sides need to respect each other and recognize the talents of their well-trained, individual members."

The Sunrise Review Process

Legislative Intent

It is the Legislature's intent to permit all qualified individuals to enter a health care profession. If there is an overwhelming need for the state to protect the public, then entry may be restricted. Where such a need to restrict entry and protect the public is identified, the regulation adopted should be set at the least restrictive level.

The Sunrise Act, RCW 18.120.010, states that a health care profession should be regulated only when:

- Unregulated practice can clearly harm or endanger the health, safety or welfare of the public and the potential for harm is easily recognizable and not remote or dependent upon tenuous argument;
- The public can reasonably benefit from an assurance of initial and continuing professional ability; and
- The public cannot be protected by other more cost effective means.

After evaluating the criteria, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the regulation should be consistent with the public interest and the least restrictive method. There are five types of regulation to be considered:

1. *Stricter civil actions and criminal prosecutions.* To be used when existing common law, statutory civil actions, and criminal prohibitions are not sufficient to eradicate existing harm.

2. *Inspection requirements.* A process enabling an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business when a service is being performed for individuals involving a hazard to the public health, safety, or welfare.

3. *Registration.* A process by which the state maintains an official roster of names and addresses of the practitioners in a given profession. The roster contains the location, nature and operation of the health care activity practiced and, if required, a description of the service provided. A registrant could be subject to the Uniform Disciplinary Act, Chapter 18.130 RCW.

4. *Certification.* A voluntary process by which the state grants recognition to an individual who has met certain qualifications. Non-certified persons may perform the same tasks, but may not use "certified" in the title. A certified person is subject to the Uniform Disciplinary Act, Chapter 18.130 RCW.

5. *Licensure.* A method of regulation by which the state grants permission to engage in a health care profession only to persons who meet predetermined qualifications. Licensure protects the scope of practice and the title. A licensee is subject to the Uniform Disciplinary Act, Chapter 18.130 RCW.

Overview of Proceedings

The Department of Health notified the applicant group, all professional associations and board and committee chairs and staff of the Sunrise Review. Meetings and discussions were held and documents circulated to all interested parties.

Regulatory agencies in all other states were requested to provide sunrise reviews, regulatory standards, or other information which would be useful in evaluating the proposal. A literature review was conducted. Staff have reviewed all submitted information and asked for feedback from interested parties.

A public hearing was conducted in Tukwila on November 3, 1995. The hearing panel included staff from the Department of Health and the State Board of Health. Interested persons were allowed to give time limited presentations. There was an additional ten-day written comment period.

Following the public hearing and additional written comments, a recommendation was made based on all information received and in consultation with the public hearing panel. The applicant group and other interested parties were briefed on the draft recommendations. The proposed final draft will be reviewed and approved by the Health Systems Quality Assurance Assistant Secretary and Department Secretary. The final report is transmitted to the Legislature via the Office of Financial Management.

Executive Summary

The Washington State Medical Association (WSMA) presented to the Legislature a bill to put a definition of surgery into the Medical Practice Act (RCW 18.71) and Osteopathic Act (RCW 18.57). The bill was first introduced in the 1994 Legislative Session, and redrafted in the 1995 Legislative Session. After discussions with the Department of Health (DOH), the WSMA revised the draft bill to narrow its affect on non-medical procedures. WSMA's chief concern is the "practice of surgical procedures outside of the lawful scope of practice." The proposed bill "seeks to prevent any profession from circumventing the requirement" that the legislature grant authority for surgery.

The bill accomplishes the following:

- Defines surgery as "a medical procedure that involves severing, penetrating, or otherwise altering the skin or tissue of human beings by the use of instruments, mechanical means, laser, or ionizing radiation. There is a religious ceremony exemption.

- Exempts those providers who are permitted by statute to perform "surgery" from having to obtain a physician (allopathic or osteopathic) license.

Findings

1. **There seem to be no physical, mental, social or economic problems, as described in the Sunrise statute, with the current way this issue is regulated.** Neither a regulatory board nor the department should grant authority to perform surgery to a profession that does not have statutory authority to do so.

2. **The proposed language in Section 2(3) concerning other health care professionals raises concerns about nearly every other health care provider regulated, and several who are unregulated, by the state.** (Detailed analysis is provided in Appendix A.)

3. **The contention advanced by the applicant that only properly trained and qualified persons should perform surgery is a valid one. However, many professions inferred that this also meant that physicians and osteopathic physicians, as a group, are the only ones who could be properly trained and qualified for any current or future surgical technique, and other providers, as a group, cannot be.**

4. **Most states have either a general restriction that surgery must be performed by physicians, or a specific restriction on eye surgery being limited to ophthalmologists. However, since 1992, optometrists in Oklahoma have been able to perform laser surgery.**

Recommendations

1. **A restrictive definition of surgery as proposed for sunrise review should not be enacted.**

However, if there is some legislation passed on this issue, the department recommends the following changes:

- The wording in Section 2(3) of the proposed legislation -- "No other profession may perform surgery unless permitted to do so by statute" -- should be reworded so that it clearly applies to any legal procedure -- whether specifically described as surgery or not -- that is currently being performed by either a regulated or unregulated health profession.

- The department should be given the authority to make rules to apply the definition to all professions as appropriate, thereby avoiding multiple versions of the "same" definition promulgated by a variety of regulatory boards. This would also help to ensure that definitions conform to legislative authority.

2. The Department of Health will take the lead and work with professions to conduct a study on the establishment of a "New Technology and Practice Review Panel."

3. Working with Boards, Commissions and Councils, the Department of Health will pursue standardized and flexible definitions of key terms.

Current Regulation and Practice

Six states prohibit surgery and laser use by non-physicians and have a definition of surgery in statute or rule. They are: Indiana and Virginia (Medical Practice Act) and New Hampshire, South Carolina and Ohio (Optometric Practice Act) and Montana (through Board Rule). Eighteen states have statutes that prohibit surgery by non-physicians but do not mention lasers specifically. There are 18 state practice acts (16 of which are optometric acts, the other two are medical practice acts) that prohibit surgery and laser use by non-physicians. Ten states do not prohibit surgery or lasers nor define surgery in medical or optometric practice acts. Of those 10, five states, including Washington, have medical practice acts that imply but do not define surgery.

Until now, the regulation of surgery in Washington state has existed mostly on the basis of: (a) a defacto definition that surgery involved penetrating or severing the skin or tissue, and (b) commonly accepted practice or definitions in statute or rules that allowed non-physician providers to penetrate or severe skin.

Most providers regulated under Chapter 18 RCW, in some way, are legally allowed to "penetrate, severe or alter the skin or tissue of human beings," therefore falling under the new proposed definition. Some of this legal practice is allowed for in rule, others in statute. Frequently, the term "surgery" is not used; often, authority is merely given for certain procedures (such as Pharmacists' authority to give immunizations). Appendix A provides current, detailed Department of Health interpretation of the affects of this proposed legislation on regulated professions.

Proposal for Sunrise Review

In November 1994 Representative Phil Dyer, Chair of the House Health Care Committee, requested that the Department of Health conduct a Sunrise Review on House Bill 2820 from the 1994 Legislative Session forwarded by the Washington State Medical Association.

The Washington State Medical Association (WSMA) presented to the Legislature a bill to put a definition of surgery into the Medical Practice Act (RCW 18.71) and Osteopathy Act (RCW 18.57). First introduced in the 1994 Legislative Session, it was redrafted in the 1995 Legislative Session. After discussions with the Department of Health, the WSMA revised the draft bill to attempt to narrow its affect on non-medical procedures. WSMA's chief concern is the "practice of surgical procedures outside of the lawful scope of practice." The proposed bill "seeks to prevent any profession from circumventing the requirement" that the legislature grant authority for surgery.

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Summary of Information

Department staff reviewed information received during the review process. Additional information was solicited from interested parties and further information was provided to the department voluntarily. In this "Summary of Information" section, the text is paraphrased by the department from all documentation received. It does not reflect the department's findings, which are found in a later section of this report.

The summary is divided (as best as it could be) into three parts which correspond to the three main criteria given by the legislature to determine if a profession should be regulated by the state and, if so, to what extent. The three criteria are: (a) harm to the public, (b) benefit to the public, and (c) other means of regulation.

A. Harm to the Public (by adopting or not adopting the proposal)

(Headings in italics indicate the source of the information.)

Washington State Medical Association

Some professions are defining surgery in Washington Administrative Code (WAC), are authorizing procedures in WAC that are not defined as surgery but really are, and there is the potential that a board could use WAC to grant permission to perform surgery when not authorized to do so by the legislature.

Emerging medical technology has changed the nature of surgery from one of tools focusing on the scalpel to one that increasingly includes such technological advancements as lasers, sound and nuclear particles. Lack of a definition in statute could permit health care professionals with inadequate training and education to perform surgical procedures, which could clearly harm or endanger the health, safety and welfare of the public. A medical practice act which clearly defines surgery will provide the necessary safety measures that ensure that patient care is not compromised by providers not adequately trained and otherwise qualified.

Medical technology has allowed surgical procedures to develop at a rapid pace. However, uniform training and scope requirements for the use of this new technology have not been developed. Surgery should be defined in law in such a manner that clearly establishes the serious nature of the procedure.

The public is entitled to the protection of statute when dealing with a medical art as critical as surgery unless another group is granted statutory authority. "Patient management is more complex than diagnosis in that it involves making repeated observations and judgments about a patient's condition and fitting them into an overall process of care. This requires the education and training of a physician." (cited from an Office of Technology Assessment report.)

Current practices, technological advances and future developments will continue to confuse the public, and in some cases even the practitioner, as to what constitutes a surgical procedures. Washington court cases have held that the practice of surgery was restricted to those who are specifically authorized by the licensing statutes to engage in that practice.

Lasers are used for many surgical procedures, including the prevention of vision loss, to reduce intraocular pressure inpatients with glaucoma, to remove cancerous lesions inside the body, to cut away plaques in the blood vessels of the heart, and to treat skin cancer. If not articulated in statute regulatory

boards might interpret these technologies to be lesser than more traditional surgical procedures. The public and public policy makers must be aware that this situation exists and that quality of care could be jeopardized.

Washington Academy of Eye Physicians and Surgeons

An increasing number of laser surgical procedures reduce the pain, invasiveness and recovery time associated with the medical treatment for various diseases, conditions and injuries. With the advent of these new laser surgical techniques, the public is beginning to believe that laser surgery is of a less "serious" nature than conventional surgery. The public is also beginning to believe that less training and skill is necessary to provide treatment for their health problems.

Physicians have an obligation to the public to help them understand that reduced pain and improved recovery time are attributable to the efficacy of these new treatments. These benefits do not, however, indicate that laser procedures are easier or less serious to their overall health and in some cases, to their lives.

Policy makers must be convinced of the adverse effects of non-physician performed surgery can have on the general welfare of the people. Laser surgery is not "easy" surgery.

The American Academy of Ophthalmology is concerned that the quality of care of patients undergoing laser surgery be safeguarded in the same tradition as patients undergoing other types of surgery. The Academy strongly supports federal and state regulatory agencies' historic position that laser surgery for medical purposes should be performed by a licensed doctor of medicine or osteopathy.

The issue at hand is not a matter of "who" can perform surgical procedures -- the constitution, statutes, courts and the Attorney General have said that only those who are specifically authorized in statutes can engage in surgery. The issue is "what" is surgery and "what will" surgery be in the future.

The Academy does not believe that a board, who will be the beneficiaries of a ruling regarding scope of practice, should usurp the legislative authority. We believe that only the legislature, elected by the people, should make those judgments.

It is not the position of the Academy to restrict those professions that currently have statutory authority to perform surgery, nor is it the position of the Academy to imply that no other profession should be permitted to petition the legislature to gain such authority. It is the Academy's position that policy makers and those wishing to change policy should have clear guidelines to form decisions and policies.

The testimony of optometric participants in the hearing had no merit in the hearing since the issue of the legislation is **what** constitutes surgery not **who** should perform it. In addition, their presentations make even clearer the need for a definition, carefully worded, that requires statutory permission for any practitioner to perform surgery. The testimony of the optometrists also makes it clear that they indeed do intend to perform surgery and some even testified that they were already doing it.

Without conducting rulemaking the Board of Optometry has indicated that the existing scope of practice allows certain surgical procedures to be performed. In response to these rulings, optometrists have begun performing those procedures, as several testified they were doing. Our lawsuit claims that this practice is illegal and that surgical procedures are outside of the statutory scope of practice.

We wish to put an end to the long-standing, divisive issue between ophthalmology and optometry. With the courts ruling, one way or the other, we can then get on with developing an eye health delivery system with all providers involved at their **appropriate** service levels. Now, more than ever, a definition of surgery is needed that will put the surgical issue clearly in the jurisdiction of the legislature and take it away from the boards which can create the types of conflicts our lawsuit exemplifies.

Washington Association of Optometric Physicians

The proposed definition is so broad, particularly from the use of the word "alter," that it is virtually impossible to know where the line between surgery and non-surgery might be drawn. The extreme examples include manicurists and barbers. Another problem is the uncertainty as to what other licensing statutes need to say before other health care professionals will be deemed to have authority to perform surgical procedures. There are three alternatives: (a) a licensing statute that uses the word "surgery"; (b) a statute which does not use "surgery" but which specifically authorizes a procedure falling within the proposed definition; and (c) a statute which does not refer to specific procedures, but which is interpreted by courts or a regulatory board as allowing procedures which fall under the definition. A board operating under the third scenario would effectively have its authority stripped by the proposed legislation, if passed. The impact on the scopes of practice of a number of health care providers is in question.

Nowhere, in any of the oral or written presentations, is there any hint as to the existence of a problem with the current care being provided to the citizens of Washington. Nowhere is there an identified threat to the public, no group or profession identified as abusing surgical privileges or otherwise providing improper care. Some comments were offered on post-surgical care, but the proposed bill would have no impact on that problem.

The proposed legislation expressly limits the number of practitioners allowed to perform surgical procedures. Therefore, the costs of those procedures will go up. The elimination of competition among professions for surgical procedures will also drive up costs.

The bill should be rejected because there is no justification whatsoever for the limitations it imposes on other health care professionals.

Individual Optometrists (combined and summarized)

This proposal means that optometrist physicians will be restricted from providing services they are already able to offer their patients. This includes foreign body removal, post-op cataract services, and punctual lacrimal plugs.

Despite the brief nature of the procedure and the low surgical risk required to safely perform photorefractive keratectomy (PRK), PRK remains a surgical procedure. (PRK is a major laser procedure performed on the eye.) However, the critical aspects of performing the PRK procedure are not outside the capabilities of the profession of optometry. Optometry is a learned specialty which provides more than an adequate understanding of the eye for performing PRK. The overwhelming majority of the complications that are associated with PRK occur in the post-operative course which already fall within the realm of optometric care.

Today's health care market demands non-restricted access, effective treatment, shared or overlapped responsibility, and cost-saving. Quality of care as directed by clinical outcomes becomes the mainstream issue. Optometric physicians are trained, licensed and required to learn skills and update skills as necessary to continue to provide the best quality of care. Many professions along with optometry will suffer from the effect of redefining surgery, including the laser, to benefit only MD or DO licensed providers.

The training of optometric physicians in the skills and knowledge necessary to deliver quality eye care to their patients is at least equal to, and in some respects greatly superior to, the training received by ophthalmologists who do not further specialize.

Optometrist physicians, as licensed health care professionals, agree that procedures should be performed only by those individuals licensed and credentialed to do so. However, a medical practice act which restrictively defines surgery, and thus limits the implementation of new technology, will cause many health care professions such as dentistry, podiatry and optometry to find their current scopes of practice restricted. The public will find access to much needed health care restricted as well.

The proposed legislation would have two effects. First, it could forever bar any health care professional other than an allopathic or osteopathic physician from providing any new or innovative procedure. Alternatively, it could require the legislature to review and act on each new development in technology and each new technique which could provide new methods of healing.

Midwives' Association of Washington State

We feel that the proposed legislative changes are overly broad, and create a much wider definition than what has generally been considered surgery. With the proposed definition, procedures such as episiotomy and perhaps even phlebotomy, would become restricted. These procedures are within the scope and expertise of midwives and should remain so. These reductions to scopes of practice for other professions are without cause or documentation that these reductions are necessary for the public benefit or protection.

The applicant report does not explicitly state what we infer is their underlying concern. We feel that if the intent of the review is to regulate laser surgery for the eye, as the applicant's supporting documents suggest, then legislative change should be limited to that concern.

ARNPs United

The language in the proposal could result in a challenge to a profession's well established scope of practice as well as the potential for access to care problems. We are concerned that the new surgery definition could be used to restrict the work of nurse practitioners, who are involved in many procedures which involve severing the tissue, altering the skin by mechanical means, etc.

Adoption of the legislation as proposed is not in the best interest of the consumer. It is a thinly veiled attempt to claim ownership rights to the use of certain established, as well as emerging, health care technologies for medical doctors. It is not the purpose of sunrise to support the establishment of an exclusive scope of practice by any profession without proof that protection of the public warrants such a severe approach.

Nursing Care Quality Assurance Commission (NCQAC)

The Commission is concerned that this definition is too broad and inclusive of procedures which are currently recognized under the auspices of nursing and thus would not be considered "surgery." Examples are: injections, insertion of monitoring lines, wound care and RN first surgical assisting.

What may have been considered surgery in the past few years has frequently been simplified by technological advances to no longer require the expertise of a physician. Examples of this include the following activities now commonly done by nurse practitioners: Norplant insertion and removal, simple suturing, treatment of venereal warts and colposcopy and biopsy.

With the dynamic nature of the current health system, new technologies will develop and be integrated into the practice sites. Providers who develop competencies in these new technologies and are within their scope of practice to treat the problem should not be arbitrarily barred from using a technique. Defining all these new technologies as "surgery" could develop an artificial barrier for the practitioner.
Washington State Nurses Association

The proposal does not meet any of the "sunrise" criteria, especially the third one calling for "other means" of regulation. The proposal also creates many conflicts with other practice acts, and is overly broad. It prevent the appropriate use of emerging technologies.

There is nothing in the applicant report which shows that current practice poses any form of public harm. Although theoretical potential harm is alleged in the report, this harm is not easily recognizable and is both remote and dependent upon tenuous argument. This proposal is literally about as broad as it could be, and has great potential to create unintended conflicts, contradictions, overlaps, ambiguity, and immense ripple effects on patients and other scopes of practice.

Washington Osteopathic Medical Association
Washington Association of Naturopathic Physicians
Washington Academy of Physician Assistants
Washington State Dental Hygienists Associatino
Washington Society of Respiratory Care Practitioners

What is the need for this definition? The applicants have not shown a problem as called for in the sunrise statute.

Different definitions of surgery procedures could be adopted by various boards who have surgical authority to the exclusion of other practitioners who utilize certain technology in their respective health practices (for example, the use of lasers by dental hygienists). Osteopathic Physicians might define a surgical technology differently that the Medical Commission or the Dental Commission. This would create public confusion as to what proper medical services are. There would also be confusion as to what constituted "malpractice."

Naturopathic Physicians perform "minor office procedures" which are surgical. They also use lasers and other technologies to provide service within their scope of practice. This proposal would create the need to add minor surgical procedures to the Naturopathic Practice Act or there would be a barrier to service for Naturopathic patients.

There is concern by all these practitioners that medical physicians would take legitimate technologies away from other healthcare practitioners by using the power to define surgical techniques and technology exclusively to their needs, particularly future technology. This would be a barrier to these professions in providing the best care to their patients.

Washington State Podiatric Association

What is the need for this definition? There may be a general need for clarification, however this proposal raises several concerns. First, dentistry and podiatry are excluded. Second, the various boards and other regulatory bodies could evolve the definition and we could end up with several different ones -- and those that don't have one don't know if they are authorized to do "surgery" or not. If a definition is going to be put in statute, it should be done right -- with each profession under Chapter 18 RCW being subject to the same one, with rules developed by the department (of health) to implement it.

Washington Association of Community Health Centers

The problem that WSMA proposes to resolve seems to arise from their concern that non-surgeons, especially optometrists, may be trying to train themselves to use laser technology. Yet their proposed solution is a far-reaching and general definition of surgery. Why such a broad response to a rather specific concern?

Any phlebotomist would suddenly become either a surgeon or guilty of malpractice. So too nurses giving injections, EMTS doing life-saving tracheotomies on accident victims, ER staff debriding burn victims' wounds, dental hygienists and other health care workers who sometimes are obligated to carry out procedures that sever, penetrate or otherwise alter the skin or tissue of human beings.

The applicant report quotes a number of national authorities who acknowledge that the technology of medical care and surgery is changing rapidly. We agree. However, WSMA draws the highly arguable conclusion that only trained surgeons should be allowed the authority to use these technologies. An important feature of the technology revolution in medicine is the way it has expanded the care capacity of many non-physicians without denying physicians their role as principal care manager.

The WSMA seems more interested in maintaining control of emerging technology through this proposed definition of surgery than in assuring that only competent personnel perform laser therapies of any kind. In the process, their definition will create broad dislocations across the entire medical and caregiving fields. The Washington Association of Community Health Centers would object to the proposal on these grounds alone, even without all the other reasons.

The list of states noted by WSMA as being silent on a definition of surgery includes most of the largest and medically most sophisticated states: California, Massachusetts, Michigan, New York, Washington. Perhaps this is not a problem needing solution?

B. Benefit to the Public (of adopting or not adopting the proposal)

(Headings in italics indicate the source of the information.)

Washington State Medical Association

The public should be assured that individuals performing laser surgery are licensed physicians who meet the appropriate professionals standards as evidenced by training, experience, and credentials in both surgical specialties and laser areas. Individuals who perform laser surgery should meet the principles of the College (of Surgeons) in all respects, including avoidance of misrepresentation to the public regarding specific advantages of the laser as compared to traditional operative techniques.

Since most patients lack the technical knowledge to make informed consumer decisions, there is an important role for states in providing the necessary guidance and certification procedures consistent with changes in technology. The results will be a higher quality of care and a necessary level of consumer confidence.

The public needs and can reasonable expect to benefit from safeguards intended to ensure that only qualified individuals perform critical medical procedures using state of the art technology along with the knowledge and training to cope with complications that may result from the use of such procedures. Legislative policy makers are responsible for establishing clear guidelines to protect the public from misuse of technology, including advances in medical technology.

Washington Academy of Eye Physicians and Surgeons

A statutory definition of surgery will not take away privileges from other health care providers. Professions which already are excluded from surgery will remain so, but with the benefit of knowing precisely what they are and are not permitted to do.

Surgery must be clarified so surgeons and the public know who may perform surgery, especially laser surgery, who regulates it, etc. Will we allow different regulating bodies to classify a procedure differently depending upon the category of persons performing the procedure? By defining it in statute, physicians will have carefully considered that definition on a scientific level and all physicians become bound by it. When the matter is taken before a state legislature, a coherent, cohesive, scientific definition can be presented. It will take the matter out of the arena of a "turf war" and can be looked at as a request for new laws governing the use of burgeoning technology.

Washington Association of Optometric Physicians

The principals of access and fair competition are echoed in reputable health care studies conducted in part by members of our own state Department of Health. For example, the Pew Task Force on Health Professions Regulation has said that "states should base practice acts on demonstrated competence and continuing competence. States should explore pathways to allow professionals to provide services to the fullest extent of the training, experience, and skills." A narrow definition of surgery as is being promoted is in direct contradiction to these types of recommendations. The proposal from WSMA would restrict Optometry from performing procedures, surgical and otherwise, for which they are trained, licensed and board certified to perform.

Many members of the Washington Academy of Eye Physicians and Surgeons participate with optometrists in co-management of patients. This proposal would seem to undermine their ability or desire to do that.

The majority of arguments advanced by the proponents related to supposed benefits to the public of having a definition of "surgery." Even if one were to accept all of those arguments at face value, they have no relevance to the question of whether the practice of surgery, however defined, should be limited to medical doctors.

Pacific Cataract and Laser Institute

The care of our citizens is our greatest concern. On the east side of the state, ophthalmologists are few and far between. Optometrists, though not abundant, are providing much needed and essential services to our citizens under current legislation and its interpretation. A restriction at this time would be a big step backward in eye care.

An accurate definition of surgery is appropriate, but restricting the application of surgery to a single learned profession is inappropriate and not in the best interest of our state's citizens.

Optometrists (combined and summarized)

Optometric physicians in Oklahoma have performed over 2000 laser procedures since being credentialed to do so in 1992. A 100% quality assurance audit has revealed that all procedures were indicated, no procedure resulted in an outcome which resulted in vision loss and all were delivered with the patient aware that the provider was an optometric physician. Research shows that serious complications can be expected in about 3% of all ophthalmic laser procedures; the rate for optometric physicians in Oklahoma is 0.5%.

The development of new technology has enhanced the ability of optometrists and other physicians to provide increasingly higher quality of care for their patients. Optometric physicians are uniquely qualified to understand the design, implementation and delivery of laser devices due to their unique and far more extensive training in and understanding of optics and light.

Any eye care professional who uses an excimer laser for therapeutic or refractive purposes should be adequately trained. The education and training should involve both didactic and practical training. Training provided by The Laser Center is a 60 hour course, including eight hours of laser training and eight hours of preceptorship to evaluate doctors during their first several procedures.

Optometry schools have already begun training optometric physicians to do laser procedures in a safe and effective manner. Laser procedures performed by optometric physicians will probably cost less than those done by ophthalmologists. The track record in Oklahoma shows that optometric physicians are providing laser services safely. It is arrogant that MDs feel that they are the only people who can learn or be trained in these procedures.

C. Other Means of Regulation (than that expressed in the proposal)

(Headings in italics indicates the source of the information.)

Washington Association of Optometric Physicians

There is a legislative approach which would be cost-effective and which would be beneficial to everyone involved. That solution is to establish a system whereby an individual health care practitioner is allowed to perform particular services or procedures on the basis of his or her skill, training, and ability, and *not* on the particular license the health care practitioner happens to hold. WAOP believes such an approach would virtually eliminate "turf wars" which now plague the legislature and the Department of Health. WAOP also believes that all of the Boards which regulate health care professionals seek to do so in a responsible, conscientious manner. Thus, we are convinced that, if this suggestion were adopted, the Boards would implement it in a fair and non-discriminatory manner. The result would be a much more objective focus on the specific skills, training and ability necessary to perform particular procedures, rather than on the type of license an individual has. This would maximize the availability of health care procedures, because every profession which can reasonably demonstrate its ability to safely and adequately perform a procedure should be qualified to do so.

Nurse Anesthetists

If there is a problem, we suggest an authorization to perform surgery could be issued by the Medical Quality Assurance Commission. Prior to that, a multi-disciplinary panel could review to see if there are any problems.

ARNPs United

It is time that all professions acknowledge the overlapping nature of their scopes of practice and work together to create a forum for literature review and an innovative exchange of ideas concerning the clinical delivery of health care services. For such a forum to be successful, however, requires a guarantee of professional neutrality such that no category of provider is in a dominant position over others who are also qualified to claim a given technology, technique, procedure, or service to be within their legal scope of practice. Advanced practice nurses of all specialties look forward to the day when we can participate in such an endeavor.

Washington State Nurses Association

This proposal hold significant possibility to create the need for extensive legal interpretations of many other existing practice acts, with great potential for needing future complicated legislative or regulatory action to fix conflicts or contradictions. We are concerned that future changes in standard surgical practice would be impeded by this definition of surgery, and that current practice would be "frozen in time" with no opportunity for professional evolution.

Midwives' Association of Washington State

We would support collaboration between the department and the professions in question to reach resolution about how those procedures should be regulated. If, however, the intent is to limit scopes of practice of other professions, then that should be explicitly argued.

If changes are necessary in statute regarding surgery, we suggest that a coalition of all affected professions have the opportunity to work with the Department of Health toward a mutually agreeable package of definition change, and, if necessary, licensing statute changes.

Department of Health Literature Search

"The world is more complex than allowing for only two alternatives, regulation or no regulation. People will support degrees of government regulation. The question to research is, how many rules are beneficial?" (Begun, 1990). Nichols believes the ongoing demand for licensure is the result of rapid technological advances, increased competition among health personnel, and transformation of the health care financing and delivery systems. Significant policy questions to ask are, "What is the relationship between granting licensure to new groups versus expanding the scopes of practice for existing groups to each of the following: cost control, innovative use of personnel, promoting life styles conducive to good health, reducing the occurrence of preventable conditions, and providing care that is adequate and accessible (Nichols, 1989)?"

Additionally, health reform literature states that managed care is making rapid strides in the country; this is especially true in Washington State. Managed care requires the most cost-effective use of providers, making "exclusive" scopes of practice less attractive. National and state studies conducted in the past few years have begun to develop a school of thought which suggests that credentialing of health providers be based more on the competency of the providers rather than a specific academic degree, license or exclusive scope of practice. (Priester, 1992; Greenlick, 1995; Starr, 1995; Goldsmith, 1992; Coye, 1993; Hancock & Bezold, 1994; Bohnen, 1994; Maine; Southern Regional Congress, 1994; Pew, 1995).

Other States

The department requested that other states report sunrise reviews, current statutes or other relevant information be forwarded. Information received cited the lack of any other sunrise reviews. Many states did not respond. Attachment B represents information supplied by the applicant about what other states do to address this issue.

Public Hearing

A public hearing was held on November 3, 1995, in Tukwila, Washington. Twenty-six people testified before the review panel.

Written Communication

Most letters received by the department were from optometric physicians in opposition to the proposal. Fifty-eight letters were received by the end of the 10 day written comment period.

Findings

1. There seem to be no physical, mental, social or economic problems, as described in the Sunrise statute, with the current way this issue is regulated.

There will disagreements and a need for interpretation from time to time, but locking in a particular definition into statute does not seem to be the appropriate mechanism for resolving such disputes. Although there is obvious room for improvements in the way we train and regulate health professionals, including the need to have standardized terminology, in the context of the sunrise criteria there is not an immediate or potential threat to the public with the current approach to regulating "surgery." Neither a regulatory board nor the department should grant authority to perform surgery to a profession that does not have statutory authority to do so.

2. The proposed language in Section 2(3) concerning other health care professionals raises concerns about nearly every other health care provider regulated, and several who are unregulated, by the state.

"Surgery" as is typically thought of is less than the broad definition proposed. Department analysis showed that a strict application of the definition of surgery, as proposed, could create much confusion among some professions. For example, dental hygienists "alter" the "tissue" but in no sense did the legislature consider that it was granting authority to perform "surgery" when the hygienist scope of practice was established. The proposed language would have the potential to stop a profession from legally performing a procedure because it would be considered "surgery" and "surgery" was not specifically authorized. (Detailed analysis is provided in Appendix A.)

Alternative language was considered but none was found within the time constraints of this review that would completely alleviate the concern that current legal and safe practices might be curtailed or at least challenged. Claims by the proponents and applicant that currently legal practice would be changed by the proposal are inconsistent with the problems identified by defining surgery so broadly to capture any future iterations. It is one thing to say you have to have statutory authority to perform surgery. It is quite another to define it in such a way that nearly every regulated and many unregulated providers would now have to have statutes authorizing surgery or some subset of surgery to maintain current legal practices.

3. The contention advanced by the applicant that only properly trained and qualified persons should perform surgery is a valid one. However, many professions inferred that this also meant that physicians and osteopathic physicians, as a group, are the only ones who could be properly trained and qualified for any current or future surgical technique, and other providers, as a group, cannot be.

4. Most states have either a general restriction that surgery must be performed by physicians, or a specific restriction on eye surgery being limited to ophthalmologists. However, since 1992, optometrists in Oklahoma have been able to perform laser surgery.

In Oklahoma, out of 2000 patients, only 1 had serious post-operative problems, and those had no lasting affect on vision. This shows that there is a wide range of applications across states, and that in the case of Oklahoma, a more flexible definition has been safe.

Recommendations

1. A restrictive definition of surgery as proposed for sunrise review should not be enacted.

However, if there is some legislation passed on this issue, the department recommends the following changes:

- The wording in Section 2(3) of the proposed legislation -- "No other profession may perform surgery unless permitted to do so by statute" -- should be reworded so that it clearly applies to any legal procedure -- whether specifically described as surgery or not -- that is currently being performed by either a regulated or unregulated health profession.

- The department should be given the authority to make rules to apply the definition to all professions as appropriate, thereby avoiding multiple versions of the "same" definition promulgated by a variety of regulatory boards. This would also help to ensure that definitions conform to legislative authority.

Rationale: No harm or potential harm to the public from the current system was shown by the applicants. On the contrary, the potential exists that the proposal would create varying legal interpretations and court challenges. Additionally, it seems more rational to allow competent providers to offer surgical services for which they are properly trained and held accountable, and that scopes of practice should allow for that.

There are good reasons to have better definitions related to health care delivery, including that of "surgery". However, putting them in statute may only be inflexible or even regressive. Concerns about public safety from providers not adequately trained to perform certain techniques are valid but can be addressed through other mechanisms. In cases where a profession wishes to expand their scope of practice to include procedures (surgical or otherwise) that were not previously authorized, a process does exist -- approaching the legislature for a change. Not adding the proposed definition to statute does not change this requirement.

Surgery has evolved over time, and many procedures originally put properly in the exclusive domain of physicians are now routinely and safely performed by others. Precluding a new technology from being used, before even knowing what that technology is, does not make good policy sense.

Concerns were stated by the applicant that professions may attempt to circumvent the statutes and authorize illegal procedures. If a profession is doing this or tries to do this, having another version of the same requirement -- that scope of practice changes require legislative approval -- will not prevent that circumvention. The department's position on this proposal should not be taken as implicit support for regulatory boards to attempt to circumvent legal requirements.

The changes recommended to the bill in case the legislature chooses to pass the bill would allow for the system to be as clear as possible from the beginning. Exemptions and coverage would be delineated. Department rule making would eliminate the possibility of multiple versions of the definition in rule.

2. The Department of Health will take the lead and work with professions to conduct a study on the establishment of a "New Technology and Practice Review Panel." This panel would be used to review use of a new technology or other practice that comes into question. This study will include (a) whether such a mechanism is needed to resolve problems such as that raised by the applicant, and if so, (b) what the best composition, decision making process, and enforcement options would be.

Rationale: As stated by the Washington Academy of Eye Physicians and Surgeons, "rapidly expanding technology...should not be left to a variety of interpretations." This panel would help alleviate that problem because as new technologies in medicine are emerging at a rapid pace, the panel would serve as a forum to determine, in a proactive manner, the most appropriate, safe and beneficial use of that technology. Frequent statute changes, often viewed as "turf battles," are not the most effective way to resolve disputes.

3. Working with Boards, Commissions and Councils, the Department of Health will pursue standardized and flexible definitions of key terms.

Rationale: There may be opportunities to provide for standard definitions of terms used regularly in health services delivery and regulation. Standardizing them will help enhance understanding by the public and providers alike, and reduce conflicts and misunderstandings.

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Appendix A

REVIEW OF POTENTIAL IMPACT OF PROPOSED DEFINITION OF SURGERY ON EXISTING PROFESSIONS/STATUTES

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.06**, THE LAW RELATING TO ACUPUNCTURISTS.

Acupuncturists use acupuncture needless and other electrical, mechanical, and magnetic devices to stimulate acupuncture points and meridians of the human body. They also perform sonopuncture, laserpuncture, and point injection therapy (aquapuncture) to promote health and treat disorders. Surgery is not specifically defined or addressed in the acupuncture statute. If the bill passes as written, Licensed Acupuncturists in Washington State may not be permitted to perform the core procedures of acupuncture practice. In effect the bill could prohibit the practice of acupuncture by anyone other than a medical physician.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.06?

Add an exemption to the surgery definition for acupuncture performed by licensed acupuncturists. Clarification would be needed as to whether acupuncture-related use of new technologies would be allowed.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.25** THE LAW RELATING TO **CHIROPRACTIC**

Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.

Chiropractors are not allowed to pierce the skin nor do they perform "surgery." However, the verbiage "mechanical means" in the proposed definition gives concerns. Chiropractors perform mechanical manipulations.

Also, 18.25 RCW includes subsection (5) Nothing in this chapter prohibits or restricts any other practitioner of a "health profession" defined in RCW 18.120.020(4) from performing any functions or procedures the practitioner is licensed to or permitted to perform, and the term "chiropractic" as defined in this chapter shall not prohibit a practitioner licensed under chapter 18.71 RCW from performing medical procedures, except such procedures shall not include the adjustment by hand of any articulation of the spine.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.25?

A clarification of the definition of "mechanical" is needed to decide whether an exception/amendment for Chiropractic should be made.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.32** THE LAW RELATING TO **DENTAL HYGIENISTS**

While it is not believed that dental hygienist perform surgery, there is concern that strict interpretation of proposed definition of surgery ("altering tissue" for example) could restrict tasks presently performed by dental hygienist.

RCW 18.19.050 states "Any person licensed as a dental hygienist in this state may remove deposits and stains from the surfaces of the teeth, may apply topical preventive or prophylactic agents, may polish and smooth restorations, may perform root planing and soft-tissue curettage, and may perform other dental operations and services delegated to them by licensed dentist....

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.29?

If the bill becomes law and if the definition of surgery includes tasks presently performed by dental hygienists, an exemption for dental hygienists needs to be included in the law.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.32** THE LAW RELATING TO **DENTISTS**

Dentists perform several types of surgery that includes but is not limited to periodontal (gum) surgery, oral surgery, jaw surgery and endodontic surgery (root canals). In reviewing the dental law, surgery is implied by the word surgery is not used.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.32?

The statutes that would need to be addressed include

- RCW 18.32.010(1) uses the term operate
- RCW 18.32.030 (9)(a)(b)(c) (subsection (c) is included if surgery is determined to include injections)

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.135** THE LAW RELATING TO **HEALTH CARE ASSISTANTS**

In RCW 18.135.010, the practices authorized include limited authority to administer skin tests and subcutaneous, intradermal, intramuscular and intravenous injections and to perform minor invasive procedures to withdraw blood. This is the reason for the HCA law. If the bill passes as written, a Health Care Assistant (HCA) would not be able to perform their duties. Certification is required so that a HCA can alter skin tissue with the use of instruments (skin testing) as well as perform blood withdrawals and injections (penetrating the human skin). All HCAs perform invasive procedures by puncturing the skin to withdraw blood. The number affected would be approximately 8,000.

Also see WAC 246-826-100 Health Care Assistant Classifications. The word surgery is not listed in RCW 18.135 or WAC 246-826.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.135?

The recommendation is to add a qualification to the surgery definition which protects the duties of Health Care Assistants and permits injections and withdrawals by means of a needle or to add appropriate language to 18.135.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.108,** THE LAW RELATING TO MASSAGE THERAPISTS.

Massage therapy involves the external manipulation of the soft tissue of the human body for therapeutic purposes. The term "mechanical means" in the bill could be interpreted as including the methods used by massage therapists in the manipulation of soft tissue. Surgery is not specifically defined or addressed in the Massage statute. If the bill passes as written, Licensed Massage Therapists in Washington State may not be permitted to perform the core procedures of massage practice. In effect the bill could prohibit the practice of massage therapy by anyone other than a medical physician.

SHOULD THIS BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.108?

Add an exemption to the surgery definition for massage therapy performed by licensed massage therapists.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.50** THE LAW RELATING TO **MIDWIVES**

The statute is silent--no mention of surgery or piercing of the skin. Midwives do episiotomies which would fall under the auspices of surgery.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.50?

Recognition of episiotomies or an exemption from the definition of surgery.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.36a**, THE LAW RELATING TO NATUROPATHIC PHYSICIANS.

Under current statutes, Naturopathic Physicians may perform "minor office procedures," which is defined as "care incident thereto of superficial lacerations and abrasions, and the removal of foreign bodies located in superficial structures". The bill definition of surgery would appear to include the minor

office procedures performed by Naturopathic Physicians. If the bill passes as written, Naturopathic Physicians in Washington State may not be permitted to perform these minor office procedures.

SHOULD THIS BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.36a?

Add an exemption to the surgery definition for minor office procedures performed by licensed Naturopathic physicians.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.79** THE LAW RELATING TO **NURSES**

RCW 18.79.260(1) defines the practice of nursing as: "...administer medications, treatments, tests, and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not at degree of independent judgment and skill is required;"

RCW 18.79.240(1)(o) discusses the practice of surgery: "In the context of the definition of registered nursing practice and advanced registered nursing practice, this chapter shall not be construed as ..... Permitting the performance of major surgery, except such minor surgery as the commission may have specifically authorized by rule adopted in accordance with chapter 34.05 RCW."

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.79?

Does the definition of surgery really need to be as broad as drafted? If there is no change in the definition 18.79.260 would need to be changed to reflect that the practices identified above are surgery and nursing is exempt. RCW 18.79.240 should be changed to recognize the commissions advisory opinions, guidelines and policies in addition to rules.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.88A** THE LAW RELATING TO **NURSING ASSISTANTS**

The new nurse delegation law allows dressing changes and catheterization as well as blood glucose monitoring. These, of course, would need to be delegated by the RN but appear to be covered in the proposed definition of surgery.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.88A?

Change the definition of surgery so that dressing changes, catheterizaitons and blood glucose monitoring would not fall under the definition of surgery.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.34** THE LAW RELATING TO **OPTICIANS**

A strict interpretation of the proposed definition would put optician practices at risk; placing a contact on the eye "alters" the tissue.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.34?

Clarification would be needed to allow current, legal practices to continue.

CONCERNS WITH THE DEFINITION OF SURGERY AS IT RELATES TO **RCW 18.53** THE LAW RELATING TO **OPTOMETRISTS**

The scope of practice for optometrists does not include surgical procedures. Some procedures, such as removal of foreign objects, could fall within the proposed definition.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.53?

The statute would have to be clarified that current, legal practices are exempt from the definition of surgery.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.57A**, THE LAW RELATING TO **OSTEOPATHIC PHYSICIAN ASSISTANTS**:

The practice act defines "Practice Medicine" as having the meaning defined in RCW 18.57.001, and outlines that osteopathic physician assistants may practice "osteopathic medicine" with the approval by the board of the practice arrangement plan. The standardized procedures included in the practice plan further specify the extent to which surgery may be performed by the physician assistant.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.57A?

The statute language does not specifically state "surgery" but implies that osteopathic physician assistants' scope of practice may be the same as osteopathic physicians as defined by the board and approved in the practice plan. The term "surgery" may need to be added to RCW 18.57A.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.74**, THE LAW RELATING TO PHYSICAL THERAPISTS.

The statutory definition of physical therapy is "the treatment of any bodily or mental condition of any person by the use of physical, chemical, and other properties of heat, cold, air, light, water, electricity, sound, massage, and therapeutic exercise." Consequently, as with massage therapists, the practice of physical therapy could be severely restricted or prohibited depending on how the surgery bill provisions are interpreted.

SHOULD THIS BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.74?

Add an exemption to the surgery definition for physical therapy performed by licensed physical therapists.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.71A**, THE LAW RELATING TO **PHYSICIAN ASSISTANTS**:

RCW 18.71A does not clearly define surgery, however, it does say the practice of medicine. WAC 246-918-130 Physician assistants (1) "A physician assistant may perform only those services as outlined in the procedure reference and guidelines established by the board." WAC 246-918-140 Certified physician assistants (1) "A certified physician assistant may perform only those services as outlined in the procedure reference and guidelines established by the board."

Currently the Commission's "procedure reference and guidelines" allows physician assistants and certified physician assistants to perform medical and surgical procedures to a limited extent. About 900 Physician Assistants are licensed.

The physician assistant-surgical assistant are allowed to assist in surgery to a very limited extent as defined by WAC 246-918-230 and 250, however, surgery is not specifically defined in the RCW 18.71A. About 40 are licensed.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.71A?

The way to remedy this issue for the physician assistants is to add the word, "surgery" to RCW 18.71A.010 (1) Definitions-- "A physician assistant means a person who is licensed by the commission to practice medicine and surgery to a limited extent only under the supervision of a physician as defined in chapter 18.71 RCW..." It is also recommended that the word, "surgery" be added to RCW 18.71A.020 Rules fixing qualifications and restricting practice--Applications--Discipline. (2) a (ii) "Physician Assistant students may practice medicine and surgery during training; and ..."

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.22**, THE LAW RELATING TO **PODIATRIC PHYSICIANS AND SURGEONS**:

The definition of surgery is included in this profession's practice act.

Another consideration relative to podiatry is that WAC 246-922-100 provides for podiatric physicians and surgeons to allow unlicensed persons to perform some services under their supervision; for example: (12) take scrapings from the skin or nails of the feet, prepare them for microscopic and culture examination; and (15) debride hyperkeratotic lesions of the foot. These minor procedures would have to be done by the podiatric physician under the proposed definition.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.22?

The term "surgery" may need to be added to RCW 18.22 and provisions made to permit certain unlicensed practices to continue with supervision.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.84**, THE LAW RELATING TO **RADIOLOGIC TECHNOLOGISTS/X-RAY TECHNICIANS**:

Radiologic Technology involves penetrating, or otherwise altering the skin or tissue of human beings by the use of diagnostic or therapeutic agents, or ionizing radiation.

RCW 18.84.010 Legislative intent - Insurance coverage not mandated - in part states, by credentialing those persons who seek to provide radiologic technology under the title of radiologic technologists, and by regulating all persons utilizing ionizing radiation on human beings this chapter identifies those practitioners who have achieved a particular level of competency.

RCW 18.84.020 Definitions allows the following ... (4) (a) Diagnostic radiologic technologist, who is a person who actually handles x-ray equipment in the process of applying radiation on a human being for diagnostic purposes at the direction of a licensed practitioner; or

(b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner, or

(c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes at the direction of a licensed practitioner.

(6) "Radiologic Technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(8) "Registered x-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

WAC 246-926-180 Parenteral procedures (1) A certified radiologic technologist may administer diagnostic and therapeutic agents under the direction and immediate supervision of a radiologist if the following guidelines are met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed. -

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including the ready availability of appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facilities shall be available for at least thirty minutes in case of a delayed reaction.

(2) A certified radiologic technologist may perform venipuncture at the direction and immediate supervision of a radiologist.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.84?

The recommendation is to add a qualification to the surgery definition which protects the duties of Radiologic Technologist and X-Ray Technicians and permits them to perform their duties or to add appropriate language to 18.84.

CONCERNS WITH THIS DEFINITION AS IT RELATES TO **RCW 18.89**, THE LAW RELATING TO **RESPIRATORY CARE PRACTITIONERS**:

In Section 18.89.040 (11), drawing and analyzing blood is listed. In WAC 246-928-015 - Allowed Procedures includes but is not limited to "performing venipuncture, placement of intravenous and arterial line catheters..."

Respiratory care practitioners draw and analyze blood as well as perform venipuncture, placement of intravenous and arterial line catheters for administration of medications limited directly to respiratory care. This would not be allowed if the surgery definition as proposed became law, because it would prevent Respiratory Care Practitioners from "penetrating the skin". Skin penetration includes drawing blood with a needle and IV's. If the bill passed as written, it would hinder the ability of respiratory care practitioners to perform duties within their job scope. The word surgery is not listed in RCW 18.89 or WAC 246-928.

SHOULD THIS BILL BECOME LAW, WHAT NEEDS TO BE ADDED TO THE SURGERY DEFINITION OR TO RCW 18.89?

The recommendation is to add a qualification to the surgery definition which protects the duties of Respiratory Care Practitioners, or to add appropriate language to RCW 18.89.

Note: **RCW 18.57**, THE LAW RELATING TO **OSTEOPATHIC PHYSICIANS AND SURGEONS**: "Surgery" is included in the practice act definitions.

RCW 18.71, THE LAW RELATING TO **PHYSICIANS AND SURGEONS**: "Surgery" is included in the practice act definitions.

APPENDIX B

October 25, 1994

Definition of Surgery - Status in 52 Statutes

NOTE: Each state is listed only one time while more than one category may apply.

Specifically Prohibits Surgery and Laser Use by Non-Physicians: Surgery Defined (6)

States where surgery and laser use is prohibited and a definition of surgery is included in either the Medical Practice Act or the Optometric Practice Act.

Medical Practice Act

Indiana[1]
Virginia[2]

Optometric Practice Act

New Hampshire
Ohio
South Carolina

Medical Board Rule

Montana[3]

Specifically Prohibits Surgery and Laser Use by Non-Physicians: No Surgery Definition (18)

States where surgery and laser use are prohibited but not defined; language appears in either the Medical Practice Act or the Optometric Practice Act.

Medical Practice Act

Louisiana[4]
Minnesota[5]

Optometric Practice Act

Alaska
Arkansas
Colorado
Connecticut
Delaware
Florida
Georgia
Maine
Mississippi
Nebraska
North Dakota
Oregon
Tennessee
Texas
Utah
Vermont

Specifically Prohibits Surgery by Non-Physicians: No Laser Reference or Surgery Definition (18)

Either Act specifically prohibits surgery by non-physicians but no determination of surgery is included; Lasers are not mentioned.

Optometric Practice Act

Alabama
Hawaii
Illinois
Iowa
Kentucky
New Mexico
Puerto Rico[6]

Both Medical and Optometric Practice Act

Arizona
Kansas
Maryland
Missouri
North Carolina
Pennsylvania
Rhode Island
South Dakota
Wisconsin
West Virginia
Wyoming

States With Silent Statutes (10)

States with no prohibition of surgery or lasers and have no definition of surgery in either the Medical or Optometric Practice Acts.

California
District of Columbia
Idaho[8]
Massachusetts[11]
Michigan[7]
Nevada
New Jersey[9]
New York
Oklahoma
Washington[10]

Endnotes

1. Optometric statute, silent statute
2. Optometric statute, prohibits surgery
3. Optometric statute, prohibits surgery
4. Optometric statute, prohibits surgery
5. Optometric statute, silent statute
6. There is no diagnostic or therapeutic statute
7. Medical statute implies surgery
8. Medical statute implies surgery
9. Medical statute mentions surgery
10. Medical statute implies surgery
11. Medical statute implies surgery

DRAFT

AN ACT Relating to the practice of medicine; and amending RCW 18.71.010, 18.71.011, and 18.57.001.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 18.71.010 and 1994 sp.s. c 9 s 302 are each amended to read as follows:

The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Commission" means the Washington state medical quality assurance commission.

(2) "Secretary" means the secretary of health.

(3) "Resident physician" means an individual who has graduated from a school of medicine which meets the requirements set forth in RCW 18.71.055 and is serving a period of postgraduate clinical medical training sponsored by a college or university in this state or by a hospital accredited by this state. For purposes of this chapter, the term shall include individuals designated as intern or medical fellow.

(4) "Emergency medical care" or "emergency medical service" has the same meaning as in chapter 18.73 RCW.

(5) "Surgery" means a medical procedure that involves severing, penetrating, or otherwise altering the skin or tissue of human beings by the use of instruments, mechanical means, laser, or ionizing radiation. "Surgery" does not mean a procedure used in a religious ceremony.

Sec. 2. RCW 18.71.011 and 1975 1st ex.s. c 171 s 15 are each amended to read as follows:

A person is practicing medicine if he or she does one or more of the following:

(1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

(2) Administers or prescribes drugs or medicinal preparations to be used by any other person;

(3) ((~~Severs or penetrates the tissues of human beings~~)) Performs surgery. No other profession may perform surgery unless permitted to do so by statute;

(4) Uses on cards, books, papers, signs or other written or printed means of giving information to the public, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions the designation "doctor of medicine", "physician", "surgeon", "m.d." or any combination thereof unless such designation additionally contains the description of another branch of the healing arts for which a person has a license: PROVIDED HOWEVER, That a person licensed under this chapter shall not engage in the practice of chiropractic as defined in RCW 18.25.005.

Sec. 3. RCW 18.57.001 and 1991 c 160 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Board" means the Washington state board of osteopathic medicine and surgery;

(2) "Department" means the department of health;

(3) "Secretary" means the secretary of health; and

(4) "Osteopathic medicine and surgery" means the use of any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including

the use of osteopathic manipulative therapy. The term means the same as "osteopathy and surgery".

(5) "Surgery" means a medical procedure that involves severing, penetrating, or otherwise altering the skin or tissue of human beings by the use of instruments, mechanical means, laser, or ionizing radiation. "Surgery" does not mean a procedure used in a religious ceremony. No other profession may perform surgery unless permitted to do so by statute.